

1 **AMENDMENTS RELATING TO GOVERNMENT RECORDS**

2 2018 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Curtis S. Bramble**

5 House Sponsor: Keven J. Stratton

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies provisions relating to government records.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ modifies provisions relating to the protected status of records of closed meetings;
- 13 ▶ modifies provisions relating to the posting of documents to the Utah Public Notice

14 Website;

- 15 ▶ modifies a provision relating to appeals of records requests; and
- 16 ▶ makes related technical and conforming changes.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **52-4-203**, as last amended by Laws of Utah 2017, Chapters 12 and 13

24 **52-4-206**, as last amended by Laws of Utah 2010, Chapter 239

25 **52-4-304**, as last amended by Laws of Utah 2008, Chapter 382

26 **63G-2-305**, as last amended by Laws of Utah 2017, Chapters 374, 382, and 415

27 **63G-2-403**, as last amended by Laws of Utah 2015, Chapters 374, 382, and 335

28

29 *Be it enacted by the Legislature of the state of Utah:*

30 Section 1. Section **52-4-203** is amended to read:

31 **52-4-203. Written minutes of open meetings -- Public records -- Recording of**
32 **meetings.**

33 (1) Except as provided under Subsection (7), written minutes and a recording shall be
34 kept of all open meetings.

35 (2) (a) Written minutes of an open meeting shall include:

36 (i) the date, time, and place of the meeting;

37 (ii) the names of members present and absent;

38 (iii) the substance of all matters proposed, discussed, or decided by the public body
39 which may include a summary of comments made by members of the public body;

40 (iv) a record, by individual member, of each vote taken by the public body;

41 (v) the name of each person who:

42 (A) is not a member of the public body; and

43 (B) after being recognized by the presiding member of the public body, provided
44 testimony or comments to the public body;

45 (vi) the substance, in brief, of the testimony or comments provided by the public under
46 Subsection (2)(a)(v); and

47 (vii) any other information that is a record of the proceedings of the meeting that any
48 member requests be entered in the minutes or recording.

49 (b) A public body may satisfy the requirement under Subsection (2)(a)(iii) or (vi) that
50 minutes include the substance of matters proposed, discussed, or decided or the substance of
51 testimony or comments by maintaining a publicly available online version of the minutes that
52 provides a link to the meeting recording at the place in the recording where the matter is
53 proposed, discussed, or decided or the testimony or comments provided.

54 (3) A recording of an open meeting shall:

55 (a) be a complete and unedited record of all open portions of the meeting from the
56 commencement of the meeting through adjournment of the meeting; and

57 (b) be properly labeled or identified with the date, time, and place of the meeting.

- 58 (4) (a) As used in this Subsection (4):
- 59 (i) "Approved minutes" means written minutes:
- 60 (A) of an open meeting; and
- 61 (B) that have been approved by the public body that held the open meeting.
- 62 (ii) "Electronic information" means information presented or provided in an electronic
- 63 format.
- 64 (iii) "Pending minutes" means written minutes:
- 65 (A) of an open meeting; and
- 66 (B) that have been prepared in draft form and are subject to change before being
- 67 approved by the public body that held the open meeting.
- 68 (iv) "Specified local public body" means a legislative body of a county, city, town, or
- 69 metro township.
- 70 (v) "State public body" means a public body that is an administrative, advisory,
- 71 executive, or legislative body of the state.
- 72 (vi) [~~"Website"~~] "State website" means the Utah Public Notice Website created under
- 73 Section 63F-1-701.
- 74 (b) Pending minutes, approved minutes, and a recording of a public meeting are public
- 75 records under Title 63G, Chapter 2, Government Records Access and Management Act.
- 76 (c) Pending minutes shall contain a clear indication that the public body has not yet
- 77 approved the minutes or that the minutes are subject to change until the public body approves
- 78 them.
- 79 (d) A state public body and a specified local public body shall require an individual
- 80 who, at an open meeting of the public body, publicly presents or provides electronic
- 81 information, relating to an item on the public body's meeting agenda, to provide the public
- 82 body, at the time of the meeting, an electronic or hard copy of the electronic information for
- 83 inclusion in the public record.
- 84 (e) A state public body shall:
- 85 (i) make pending minutes available to the public within 30 days after holding the open

86 meeting that is the subject of the pending minutes;

87 (ii) within three business days after approving written minutes of an open meeting:

88 (A) post to the state website a copy of the approved minutes and any public materials
89 distributed at the meeting;

90 (B) make the approved minutes and public materials available to the public at the
91 public body's primary office; and

92 (C) if the public body provides online minutes under Subsection (2)(b), post approved
93 minutes that comply with Subsection (2)(b) and the public materials on the public body's
94 website; and

95 (iii) within three business days after holding an open meeting, post on the state website
96 an audio recording of the open meeting, or a link to the recording.

97 (f) A specified local public body shall:

98 (i) make pending minutes available to the public within 30 days after holding the open
99 meeting that is the subject of the pending minutes;

100 (ii) within three business days after approving written minutes of an open meeting, post
101 and make available a copy of the approved minutes and any public materials distributed at the
102 meeting, as provided in Subsection (4)(e)(ii); and

103 (iii) within three business days after holding an open meeting, make an audio recording
104 of the open meeting available to the public for listening.

105 (g) A public body that is not a state public body or a specified local public body shall:

106 (i) make pending minutes available to the public within a reasonable time after holding
107 the open meeting that is the subject of the pending minutes;

108 (ii) within three business days after approving written minutes, make the approved
109 minutes available to the public; and

110 (iii) within three business days after holding an open meeting, make an audio recording
111 of the open meeting available to the public for listening.

112 (h) A public body shall establish and implement procedures for the public body's
113 approval of the written minutes of each meeting.

114 (i) Approved minutes of an open meeting are the official record of the meeting.

115 (5) All or any part of an open meeting may be independently recorded by any person in
116 attendance if the recording does not interfere with the conduct of the meeting.

117 (6) The written minutes or recording of an open meeting that are required to be
118 retained permanently shall be maintained in or converted to a format that meets long-term
119 records storage requirements.

120 (7) Notwithstanding Subsection (1), a recording is not required to be kept of:

121 (a) an open meeting that is a site visit or a traveling tour, if no vote or action is taken
122 by the public body; or

123 (b) an open meeting of a local district under Title 17B, Limited Purpose Local
124 Government Entities - Local Districts, or special service district under Title 17D, Chapter 1,
125 Special Service District Act, if the district's annual budgeted expenditures for all funds,
126 excluding capital expenditures and debt service, are \$50,000 or less.

127 Section 2. Section **52-4-206** is amended to read:

128 **52-4-206. Record of closed meetings.**

129 (1) Except as provided under Subsection (6), if a public body closes a meeting under
130 Subsection **52-4-205**(1), the public body:

131 (a) shall make a recording of the closed portion of the meeting; and

132 (b) may keep detailed written minutes that disclose the content of the closed portion of
133 the meeting.

134 (2) A recording of a closed meeting shall be complete and unedited from the
135 commencement of the closed meeting through adjournment of the closed meeting.

136 (3) The recording and any minutes of a closed meeting shall include:

137 (a) the date, time, and place of the meeting;

138 (b) the names of members present and absent; and

139 (c) the names of all others present except where the disclosure would infringe on the
140 confidentiality necessary to fulfill the original purpose of closing the meeting.

141 (4) Minutes or recordings of a closed meeting that are required to be retained

142 permanently shall be maintained in or converted to a format that meets long-term records
143 storage requirements.

144 (5) [~~Both a~~] A recording [and], transcript, report, and written minutes of a closed
145 [meetings] meeting are protected records under Title 63G, Chapter 2, Government Records
146 Access and Management Act, except that the records may be disclosed under a court order only
147 as provided under Section [52-4-304](#).

148 (6) If a public body closes a meeting exclusively for the purposes described under
149 Subsection [52-4-205](#)(1)(a), (1)(f), or (2):

150 (a) the person presiding shall sign a sworn statement affirming that the sole purpose for
151 closing the meeting was to discuss the purposes described under Subsection
152 [52-4-205](#)(1)(a),(1)(f), or (2); and

153 (b) the provisions of Subsection (1) of this section do not apply.

154 Section 3. Section **52-4-304** is amended to read:

155 **52-4-304. Action challenging closed meeting.**

156 (1) Notwithstanding the procedure established under Subsection [63G-2-202](#)(7), in any
157 action brought under the authority of this chapter to challenge the legality of a closed meeting
158 held by a public body, the court shall:

159 (a) review the recording or written minutes of the closed meeting in camera; and

160 (b) decide the legality of the closed meeting.

161 (2) (a) If the judge determines that the public body did not violate Section [52-4-204](#),
162 [52-4-205](#), or [52-4-206](#) regarding closed meetings, the judge shall dismiss the case without
163 disclosing or revealing any information from the recording or minutes of the closed meeting.

164 (b) If the judge determines that the public body violated Section [52-4-204](#), [52-4-205](#), or
165 [52-4-206](#) regarding closed meetings, the judge shall publicly disclose or reveal from the
166 recording or minutes of the closed meeting all information about the portion of the meeting that
167 was illegally closed.

168 (3) Nothing in this section may be construed to affect the ability of a public body to
169 reclassify a record, as defined in Section [63G-2-103](#), as provided in Section [63G-2-307](#).

170 Section 4. Section **63G-2-305** is amended to read:

171 **63G-2-305. Protected records.**

172 The following records are protected if properly classified by a governmental entity:

173 (1) trade secrets as defined in Section **13-24-2** if the person submitting the trade secret
174 has provided the governmental entity with the information specified in Section **63G-2-309**;

175 (2) commercial information or nonindividual financial information obtained from a
176 person if:

177 (a) disclosure of the information could reasonably be expected to result in unfair
178 competitive injury to the person submitting the information or would impair the ability of the
179 governmental entity to obtain necessary information in the future;

180 (b) the person submitting the information has a greater interest in prohibiting access
181 than the public in obtaining access; and

182 (c) the person submitting the information has provided the governmental entity with
183 the information specified in Section **63G-2-309**;

184 (3) commercial or financial information acquired or prepared by a governmental entity
185 to the extent that disclosure would lead to financial speculations in currencies, securities, or
186 commodities that will interfere with a planned transaction by the governmental entity or cause
187 substantial financial injury to the governmental entity or state economy;

188 (4) records, the disclosure of which could cause commercial injury to, or confer a
189 competitive advantage upon a potential or actual competitor of, a commercial project entity as
190 defined in Subsection **11-13-103(4)**;

191 (5) test questions and answers to be used in future license, certification, registration,
192 employment, or academic examinations;

193 (6) records, the disclosure of which would impair governmental procurement
194 proceedings or give an unfair advantage to any person proposing to enter into a contract or
195 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this
196 Subsection (6) does not restrict the right of a person to have access to, after the contract or
197 grant has been awarded and signed by all parties, a bid, proposal, application, or other

198 information submitted to or by a governmental entity in response to:

- 199 (a) an invitation for bids;
- 200 (b) a request for proposals;
- 201 (c) a request for quotes;
- 202 (d) a grant; or
- 203 (e) other similar document;

204 (7) information submitted to or by a governmental entity in response to a request for
205 information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict
206 the right of a person to have access to the information, after:

207 (a) a contract directly relating to the subject of the request for information has been
208 awarded and signed by all parties; or

209 (b) (i) a final determination is made not to enter into a contract that relates to the
210 subject of the request for information; and

211 (ii) at least two years have passed after the day on which the request for information is
212 issued;

213 (8) records that would identify real property or the appraisal or estimated value of real
214 or personal property, including intellectual property, under consideration for public acquisition
215 before any rights to the property are acquired unless:

216 (a) public interest in obtaining access to the information is greater than or equal to the
217 governmental entity's need to acquire the property on the best terms possible;

218 (b) the information has already been disclosed to persons not employed by or under a
219 duty of confidentiality to the entity;

220 (c) in the case of records that would identify property, potential sellers of the described
221 property have already learned of the governmental entity's plans to acquire the property;

222 (d) in the case of records that would identify the appraisal or estimated value of
223 property, the potential sellers have already learned of the governmental entity's estimated value
224 of the property; or

225 (e) the property under consideration for public acquisition is a single family residence

226 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
227 the property as required under Section 78B-6-505;

228 (9) records prepared in contemplation of sale, exchange, lease, rental, or other
229 compensated transaction of real or personal property including intellectual property, which, if
230 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
231 of the subject property, unless:

232 (a) the public interest in access is greater than or equal to the interests in restricting
233 access, including the governmental entity's interest in maximizing the financial benefit of the
234 transaction; or

235 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of
236 the value of the subject property have already been disclosed to persons not employed by or
237 under a duty of confidentiality to the entity;

238 (10) records created or maintained for civil, criminal, or administrative enforcement
239 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
240 release of the records:

241 (a) reasonably could be expected to interfere with investigations undertaken for
242 enforcement, discipline, licensing, certification, or registration purposes;

243 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
244 proceedings;

245 (c) would create a danger of depriving a person of a right to a fair trial or impartial
246 hearing;

247 (d) reasonably could be expected to disclose the identity of a source who is not
248 generally known outside of government and, in the case of a record compiled in the course of
249 an investigation, disclose information furnished by a source not generally known outside of
250 government if disclosure would compromise the source; or

251 (e) reasonably could be expected to disclose investigative or audit techniques,
252 procedures, policies, or orders not generally known outside of government if disclosure would
253 interfere with enforcement or audit efforts;

254 (11) records the disclosure of which would jeopardize the life or safety of an
255 individual;

256 (12) records the disclosure of which would jeopardize the security of governmental
257 property, governmental programs, or governmental recordkeeping systems from damage, theft,
258 or other appropriation or use contrary to law or public policy;

259 (13) records that, if disclosed, would jeopardize the security or safety of a correctional
260 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
261 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

262 (14) records that, if disclosed, would reveal recommendations made to the Board of
263 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
264 Board of Pardons and Parole, or the Department of Human Services that are based on the
265 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
266 jurisdiction;

267 (15) records and audit workpapers that identify audit, collection, and operational
268 procedures and methods used by the State Tax Commission, if disclosure would interfere with
269 audits or collections;

270 (16) records of a governmental audit agency relating to an ongoing or planned audit
271 until the final audit is released;

272 (17) records that are subject to the attorney client privilege;

273 (18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer,
274 employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial,
275 quasi-judicial, or administrative proceeding;

276 (19) (a) (i) personal files of a state legislator, including personal correspondence to or
277 from a member of the Legislature; and

278 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
279 legislative action or policy may not be classified as protected under this section; and

280 (b) (i) an internal communication that is part of the deliberative process in connection
281 with the preparation of legislation between:

- 282 (A) members of a legislative body;
- 283 (B) a member of a legislative body and a member of the legislative body's staff; or
- 284 (C) members of a legislative body's staff; and
- 285 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
- 286 legislative action or policy may not be classified as protected under this section;
- 287 (20) (a) records in the custody or control of the Office of Legislative Research and
- 288 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
- 289 legislation or contemplated course of action before the legislator has elected to support the
- 290 legislation or course of action, or made the legislation or course of action public; and
- 291 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
- 292 Office of Legislative Research and General Counsel is a public document unless a legislator
- 293 asks that the records requesting the legislation be maintained as protected records until such
- 294 time as the legislator elects to make the legislation or course of action public;
- 295 (21) research requests from legislators to the Office of Legislative Research and
- 296 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
- 297 in response to these requests;
- 298 (22) drafts, unless otherwise classified as public;
- 299 (23) records concerning a governmental entity's strategy about:
- 300 (a) collective bargaining; or
- 301 (b) imminent or pending litigation;
- 302 (24) records of investigations of loss occurrences and analyses of loss occurrences that
- 303 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
- 304 Uninsured Employers' Fund, or similar divisions in other governmental entities;
- 305 (25) records, other than personnel evaluations, that contain a personal recommendation
- 306 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
- 307 personal privacy, or disclosure is not in the public interest;
- 308 (26) records that reveal the location of historic, prehistoric, paleontological, or
- 309 biological resources that if known would jeopardize the security of those resources or of

310 valuable historic, scientific, educational, or cultural information;

311 (27) records of independent state agencies if the disclosure of the records would
312 conflict with the fiduciary obligations of the agency;

313 (28) records of an institution within the state system of higher education defined in
314 Section [53B-1-102](#) regarding tenure evaluations, appointments, applications for admissions,
315 retention decisions, and promotions, which could be properly discussed in a meeting closed in
316 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
317 the final decisions about tenure, appointments, retention, promotions, or those students
318 admitted, may not be classified as protected under this section;

319 (29) records of the governor's office, including budget recommendations, legislative
320 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
321 policies or contemplated courses of action before the governor has implemented or rejected
322 those policies or courses of action or made them public;

323 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
324 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
325 recommendations in these areas;

326 (31) records provided by the United States or by a government entity outside the state
327 that are given to the governmental entity with a requirement that they be managed as protected
328 records if the providing entity certifies that the record would not be subject to public disclosure
329 if retained by it;

330 (32) transcripts, minutes, recordings, or reports of the closed portion of a meeting of a
331 public body except as provided in Section [52-4-206](#);

332 (33) records that would reveal the contents of settlement negotiations but not including
333 final settlements or empirical data to the extent that they are not otherwise exempt from
334 disclosure;

335 (34) memoranda prepared by staff and used in the decision-making process by an
336 administrative law judge, a member of the Board of Pardons and Parole, or a member of any
337 other body charged by law with performing a quasi-judicial function;

338 (35) records that would reveal negotiations regarding assistance or incentives offered
339 by or requested from a governmental entity for the purpose of encouraging a person to expand
340 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
341 person or place the governmental entity at a competitive disadvantage, but this section may not
342 be used to restrict access to a record evidencing a final contract;

343 (36) materials to which access must be limited for purposes of securing or maintaining
344 the governmental entity's proprietary protection of intellectual property rights including patents,
345 copyrights, and trade secrets;

346 (37) the name of a donor or a prospective donor to a governmental entity, including an
347 institution within the state system of higher education defined in Section 53B-1-102, and other
348 information concerning the donation that could reasonably be expected to reveal the identity of
349 the donor, provided that:

350 (a) the donor requests anonymity in writing;

351 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
352 classified protected by the governmental entity under this Subsection (37); and

353 (c) except for an institution within the state system of higher education defined in
354 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged
355 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
356 over the donor, a member of the donor's immediate family, or any entity owned or controlled
357 by the donor or the donor's immediate family;

358 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
359 73-18-13;

360 (39) a notification of workers' compensation insurance coverage described in Section
361 34A-2-205;

362 (40) (a) the following records of an institution within the state system of higher
363 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,
364 or received by or on behalf of faculty, staff, employees, or students of the institution:

365 (i) unpublished lecture notes;

366 (ii) unpublished notes, data, and information:
367 (A) relating to research; and
368 (B) of:
369 (I) the institution within the state system of higher education defined in Section
370 [53B-1-102](#); or
371 (II) a sponsor of sponsored research;
372 (iii) unpublished manuscripts;
373 (iv) creative works in process;
374 (v) scholarly correspondence; and
375 (vi) confidential information contained in research proposals;
376 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
377 information required pursuant to Subsection [53B-16-302](#)(2)(a) or (b); and
378 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
379 (41) (a) records in the custody or control of the Office of Legislative Auditor General
380 that would reveal the name of a particular legislator who requests a legislative audit prior to the
381 date that audit is completed and made public; and
382 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
383 Office of the Legislative Auditor General is a public document unless the legislator asks that
384 the records in the custody or control of the Office of Legislative Auditor General that would
385 reveal the name of a particular legislator who requests a legislative audit be maintained as
386 protected records until the audit is completed and made public;
387 (42) records that provide detail as to the location of an explosive, including a map or
388 other document that indicates the location of:
389 (a) a production facility; or
390 (b) a magazine;
391 (43) information:
392 (a) contained in the statewide database of the Division of Aging and Adult Services
393 created by Section [62A-3-311.1](#); or

394 (b) received or maintained in relation to the Identity Theft Reporting Information
395 System (IRIS) established under Section 67-5-22;

396 (44) information contained in the Management Information System and Licensing
397 Information System described in Title 62A, Chapter 4a, Child and Family Services;

398 (45) information regarding National Guard operations or activities in support of the
399 National Guard's federal mission;

400 (46) records provided by any pawn or secondhand business to a law enforcement
401 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
402 Secondhand Merchandise Transaction Information Act;

403 (47) information regarding food security, risk, and vulnerability assessments performed
404 by the Department of Agriculture and Food;

405 (48) except to the extent that the record is exempt from this chapter pursuant to Section
406 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or
407 prepared or maintained by the Division of Emergency Management, and the disclosure of
408 which would jeopardize:

409 (a) the safety of the general public; or
410 (b) the security of:

411 (i) governmental property;
412 (ii) governmental programs; or
413 (iii) the property of a private person who provides the Division of Emergency
414 Management information;

415 (49) records of the Department of Agriculture and Food that provides for the
416 identification, tracing, or control of livestock diseases, including any program established under
417 Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act, or Title 4, Chapter 31, Control
418 of Animal Disease;

419 (50) as provided in Section 26-39-501:

420 (a) information or records held by the Department of Health related to a complaint
421 regarding a child care program or residential child care which the department is unable to

422 substantiate; and

423 (b) information or records related to a complaint received by the Department of Health
424 from an anonymous complainant regarding a child care program or residential child care;

425 (51) unless otherwise classified as public under Section 63G-2-301 and except as
426 provided under Section 41-1a-116, an individual's home address, home telephone number, or
427 personal mobile phone number, if:

428 (a) the individual is required to provide the information in order to comply with a law,
429 ordinance, rule, or order of a government entity; and

430 (b) the subject of the record has a reasonable expectation that this information will be
431 kept confidential due to:

432 (i) the nature of the law, ordinance, rule, or order; and

433 (ii) the individual complying with the law, ordinance, rule, or order;

434 (52) the name, home address, work addresses, and telephone numbers of an individual
435 that is engaged in, or that provides goods or services for, medical or scientific research that is:

436 (a) conducted within the state system of higher education, as defined in Section
437 53B-1-102; and

438 (b) conducted using animals;

439 (53) an initial proposal under Title 63N, Chapter 13, Part 2, Government Procurement
440 Private Proposal Program, to the extent not made public by rules made under that chapter;

441 (54) in accordance with Section 78A-12-203, any record of the Judicial Performance
442 Evaluation Commission concerning an individual commissioner's vote on whether or not to
443 recommend that the voters retain a judge including information disclosed under Subsection
444 78A-12-203(5)(e);

445 (55) information collected and a report prepared by the Judicial Performance
446 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter
447 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
448 the information or report;

449 (56) records contained in the Management Information System created in Section

450 [62A-4a-1003](#);

451 (57) records provided or received by the Public Lands Policy Coordinating Office in
452 furtherance of any contract or other agreement made in accordance with Section [63J-4-603](#);

453 (58) information requested by and provided to the 911 Division under Section
454 [63H-7a-302](#);

455 (59) in accordance with Section [73-10-33](#):

456 (a) a management plan for a water conveyance facility in the possession of the Division
457 of Water Resources or the Board of Water Resources; or

458 (b) an outline of an emergency response plan in possession of the state or a county or
459 municipality;

460 (60) the following records in the custody or control of the Office of Inspector General
461 of Medicaid Services, created in Section [63A-13-201](#):

462 (a) records that would disclose information relating to allegations of personal
463 misconduct, gross mismanagement, or illegal activity of a person if the information or
464 allegation cannot be corroborated by the Office of Inspector General of Medicaid Services
465 through other documents or evidence, and the records relating to the allegation are not relied
466 upon by the Office of Inspector General of Medicaid Services in preparing a final investigation
467 report or final audit report;

468 (b) records and audit workpapers to the extent they would disclose the identity of a
469 person who, during the course of an investigation or audit, communicated the existence of any
470 Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or
471 regulation adopted under the laws of this state, a political subdivision of the state, or any
472 recognized entity of the United States, if the information was disclosed on the condition that
473 the identity of the person be protected;

474 (c) before the time that an investigation or audit is completed and the final
475 investigation or final audit report is released, records or drafts circulated to a person who is not
476 an employee or head of a governmental entity for the person's response or information;

477 (d) records that would disclose an outline or part of any investigation, audit survey

478 plan, or audit program; or

479 (e) requests for an investigation or audit, if disclosure would risk circumvention of an
480 investigation or audit;

481 (61) records that reveal methods used by the Office of Inspector General of Medicaid
482 Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or
483 abuse;

484 (62) information provided to the Department of Health or the Division of Occupational
485 and Professional Licensing under Subsection 58-68-304(3) or (4);

486 (63) a record described in Section 63G-12-210;

487 (64) captured plate data that is obtained through an automatic license plate reader
488 system used by a governmental entity as authorized in Section 41-6a-2003;

489 (65) any record in the custody of the Utah Office for Victims of Crime relating to a
490 victim, including:

491 (a) a victim's application or request for benefits;

492 (b) a victim's receipt or denial of benefits; and

493 (c) any administrative notes or records made or created for the purpose of, or used to,
494 evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim
495 Reparations Fund;

496 (66) an audio or video recording created by a body-worn camera, as that term is
497 defined in Section 77-7a-103, that records sound or images inside a hospital or health care
498 facility as those terms are defined in Section 78B-3-403, inside a clinic of a health care
499 provider, as that term is defined in Section 78B-3-403, or inside a human service program as
500 that term is defined in Subsection 62A-2-101(19)(a)(vi), except for recordings that:

501 (a) depict the commission of an alleged crime;

502 (b) record any encounter between a law enforcement officer and a person that results in
503 death or bodily injury, or includes an instance when an officer fires a weapon;

504 (c) record any encounter that is the subject of a complaint or a legal proceeding against
505 a law enforcement officer or law enforcement agency;

506 (d) contain an officer involved critical incident as defined in Subsection
507 76-2-408(1)(d); or

508 (e) have been requested for reclassification as a public record by a subject or
509 authorized agent of a subject featured in the recording; and

510 (67) a record pertaining to the search process for a president of an institution of higher
511 education described in Section 53B-2-102, except for application materials for a publicly
512 announced finalist.

513 Section 5. Section 63G-2-403 is amended to read:

514 **63G-2-403. Appeals to the records committee.**

515 (1) (a) A records committee appellant appeals to the records committee by filing a
516 notice of appeal with the executive secretary of the records committee no later than 30 days
517 after the date of issuance of the decision being appealed.

518 (b) Notwithstanding Subsection (1)(a), a requester may file a notice of appeal with the
519 executive secretary of the records committee no later than 45 days after the day on which the
520 record request is made if:

- 521 (i) the circumstances described in Subsection 63G-2-401(1)(b) occur; and
- 522 (ii) the chief administrative officer fails to make a decision under Section 63G-2-401.

523 (2) The notice of appeal shall:

524 (a) contain the name, mailing address, and daytime telephone number of the records
525 committee appellant;

526 (b) be accompanied by a copy of the decision being appealed; and

527 (c) state the relief sought.

528 (3) The records committee appellant:

529 (a) shall, on the day on which the notice of appeal is filed with the records committee,
530 serve a copy of the notice of appeal on:

531 (i) the governmental entity whose access denial is the subject of the appeal, if the
532 records committee appellant is a requester or interested party; or

533 (ii) the requester or interested party who is a party to the local appeals board

534 proceeding that resulted in the decision that the political subdivision is appealing to the records
535 committee, if the records committee appellant is a political subdivision; and

536 (b) may file a short statement of facts, reasons, and legal authority in support of the
537 appeal.

538 (4) (a) Except as provided in Subsections (4)(b) and (c), no later than seven business
539 days after receiving a notice of appeal, the executive secretary of the records committee shall:

540 (i) schedule a hearing for the records committee to discuss the appeal at the next
541 regularly scheduled committee meeting falling at least 16 days after the date the notice of
542 appeal is filed but no longer than 64 calendar days after the date the notice of appeal was filed
543 except that the records committee may schedule an expedited hearing upon application of the
544 records committee appellant and good cause shown;

545 (ii) send a copy of the notice of hearing to the records committee appellant; and

546 (iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing
547 to:

548 (A) each member of the records committee;

549 (B) the records officer and the chief administrative officer of the governmental entity
550 whose access denial is the subject of the appeal, if the records committee appellant is a
551 requester or interested party;

552 (C) any person who made a business confidentiality claim under Section [63G-2-309](#) for
553 a record that is the subject of the appeal; and

554 (D) all persons who participated in the proceedings before the governmental entity's
555 chief administrative officer, if the appeal is of the chief administrative officer's decision
556 affirming an access denial.

557 (b) (i) The executive secretary of the records committee may decline to schedule a
558 hearing if the record series that is the subject of the appeal has been found by the committee in
559 a previous hearing involving the same governmental entity to be appropriately classified as
560 private, controlled, or protected.

561 (ii) (A) If the executive secretary of the records committee declines to schedule a

562 hearing, the executive secretary of the records committee shall send a notice to the records
563 committee appellant indicating that the request for hearing has been denied and the reason for
564 the denial.

565 (B) The committee shall make rules to implement this section as provided by Title
566 63G, Chapter 3, Utah Administrative Rulemaking Act.

567 (c) The executive secretary of the records committee may schedule a hearing on an
568 appeal to the records committee at a regularly scheduled records committee meeting that is
569 later than the period described in Subsection (4)(a)(i) if that records committee meeting is the
570 first regularly scheduled records committee meeting at which there are fewer than 10 appeals
571 scheduled to be heard.

572 (5) (a) No later than five business days before the hearing, a governmental entity shall
573 submit to the executive secretary of the records committee a written statement of facts, reasons,
574 and legal authority in support of the governmental entity's position.

575 (b) The governmental entity shall send a copy of the written statement by first class
576 mail, postage prepaid, to the requester or interested party involved in the appeal. The executive
577 secretary shall forward a copy of the written statement to each member of the records
578 committee.

579 (6) (a) No later than 10 business days after the notice of appeal is sent by the executive
580 secretary, a person whose legal interests may be substantially affected by the proceeding may
581 file a request for intervention before the records committee.

582 (b) Any written statement of facts, reasons, and legal authority in support of the
583 intervener's position shall be filed with the request for intervention.

584 (c) The person seeking intervention shall provide copies of the statement described in
585 Subsection (6)(b) to all parties to the proceedings before the records committee.

586 (7) The records committee shall hold a hearing within the period of time described in
587 Subsection (4).

588 (8) At the hearing, the records committee shall allow the parties to testify, present
589 evidence, and comment on the issues. The records committee may allow other interested

590 persons to comment on the issues.

591 (9) (a) (i) The records committee:

592 (A) may review the disputed records; and

593 (B) shall review the disputed records, if the committee is weighing the various interests
594 under Subsection (11).

595 (ii) A review of the disputed records under Subsection (9)(a)(i) shall be in camera.

596 (b) Members of the records committee may not disclose any information or record
597 reviewed by the committee in camera unless the disclosure is otherwise authorized by this
598 chapter.

599 (10) (a) Discovery is prohibited, but the records committee may issue subpoenas or
600 other orders to compel production of necessary evidence.

601 (b) When the subject of a records committee subpoena disobeys or fails to comply with
602 the subpoena, the records committee may file a motion for an order to compel obedience to the
603 subpoena with the district court.

604 (c) (i) The records committee's review shall be de novo, if the appeal is an appeal from
605 a decision of a chief administrative officer:

606 (A) issued under Section 63G-2-401; or

607 (B) issued by a chief administrative officer of a political subdivision that has not
608 established a local appeals board.

609 (ii) For an appeal from a decision of a local appeals board, the records committee shall
610 review and consider the decision of the local appeals board.

611 (11) (a) No later than seven business days after the hearing, the records committee shall
612 issue a signed order:

613 (i) granting the relief sought, in whole or in part; or

614 (ii) upholding the governmental entity's access denial, in whole or in part.

615 (b) Except as provided in Section 63G-2-406, the records committee may, upon
616 consideration and weighing of the various interests and public policies pertinent to the
617 classification and disclosure or nondisclosure, order the disclosure of information properly

618 classified as private, controlled, or protected if the public interest favoring access is greater
619 than or equal to the interest favoring restriction of access.

620 (c) In making a determination under Subsection (11)(b), the records committee shall
621 consider and, where appropriate, limit the requester's or interested party's use and further
622 disclosure of the record in order to protect:

623 (i) privacy interests in the case of a private or controlled record;

624 (ii) business confidentiality interests in the case of a record protected under Subsection
625 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and

626 (iii) privacy interests or the public interest in the case of other protected records.

627 (12) The order of the records committee shall include:

628 (a) a statement of reasons for the decision, including citations to this chapter, court rule
629 or order, another state statute, federal statute, or federal regulation that governs disclosure of
630 the record, if the citations do not disclose private, controlled, or protected information;

631 (b) a description of the record or portions of the record to which access was ordered or
632 denied, if the description does not disclose private, controlled, or protected information or
633 information exempt from disclosure under Subsection 63G-2-201(3)(b);

634 (c) a statement that any party to the proceeding before the records committee may
635 appeal the records committee's decision to district court; and

636 (d) a brief summary of the appeals process, the time limits for filing an appeal, and a
637 notice that in order to protect its rights on appeal, the party may wish to seek advice from an
638 attorney.

639 (13) If the records committee fails to issue a decision within 73 calendar days of the
640 filing of the notice of appeal, that failure is the equivalent of an order denying the appeal. A
641 records committee appellant shall notify the records committee in writing if the records
642 committee appellant considers the appeal denied.

643 (14) A party to a proceeding before the records committee may seek judicial review in
644 district court of a records committee order by filing a petition for review of the records
645 committee order as provided in Section 63G-2-404.

646 (15) (a) Unless a notice of intent to appeal is filed under Subsection (15)(b), each party
647 to the proceeding shall comply with the order of the records committee.

648 (b) If a party disagrees with the order of the records committee, that party may file a
649 notice of intent to appeal the order of the records committee.

650 (c) If the records committee orders the governmental entity to produce a record and no
651 appeal is filed, or if, as a result of the appeal, the governmental entity is required to produce a
652 record, the governmental entity shall:

653 (i) produce the record; and

654 (ii) file a notice of compliance with the records committee.

655 (d) (i) If the governmental entity that is ordered to produce a record fails to file a notice
656 of compliance or a notice of intent to appeal, the records committee may do either or both of
657 the following:

658 (A) impose a civil penalty of up to \$500 for each day of continuing noncompliance; or

659 (B) send written notice of the governmental entity's noncompliance to[:] the governor.

660 [~~(F) the governor for executive branch entities;~~]

661 [~~(H) the Legislative Management Committee for legislative branch entities; and]~~

662 [~~(I) the Judicial Council for judicial branch agencies entities.]~~

663 (ii) In imposing a civil penalty, the records committee shall consider the gravity and
664 circumstances of the violation, including whether the failure to comply was due to neglect or
665 was willful or intentional.